Office-Supreme Court, U.S.
FILED
MAY 1 1981
ALEXANDER L. STEVAS,
CLERK

No. 80-1305

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

ALFRED L. SNAPP & SON, INC., *et al.*,
Petitioners,

v.

COMMONWEALTH OF PUERTO RICO on the relation of PEDRO BAREZ, SECRETARY, DEPARTMENT OF LABOR and HUMAN RESOURCES,
Respondent.

SUPPLEMENTAL BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

THOMAS J. BACAS
1250 Connecticut Avenue, N.W.
Washington, D.C. 20036
202/466-7330
Attorney for Petitioners

Of Counsel:

CHARLES, KARALEKAS, BACAS
& MCCAHILL
S. STEVEN KARALEKAS

May 1, 1981

WILSON - EPES PRINTING CO., INC. - 789-0096 - WASHINGTON, D.C. 20001

TABLE OF CONTENTS

	Page
Table of Authorities	ii
List of Appendices	iii
Introduction	1
Argument	2
Allowing the Commonwealth of Puerto Rico To Sue as Parens Patriae in Cases Like This Will Unnecessarily Clog the Federal Courts With Cases That Could Be Resolved Through the U.S. Department of Labor's Employment Service Complaint System	2
Conclusion	8

TABLE OF AUTHORITIES

Cases Page

Commonwealth of Puerto Rico, Etc. v. Bramkamp, Civil No. 79 Civ. 0199 (S.D.N.Y., filed January 12, 1979), *appeal pending*, Docket No. 79-7777 (2d Cir.) 1, 2

Rios v. Marshall, Civil No. 79 Civ. 5711 (S.D.N.Y., filed October 22, 1979) 5

Western Colorado Fruit Growers Association v. Marshall, 483 F. Supp. 693 (W.D. Colo. 1979) .. 4 n.2

Regulations

20 C.F.R. § 655.210(a) 3

20 C.F.R. Part 658 ..... 2, 3

20 C.F.R. § 658.412(d) 4

20 C.F.R. § 658.502 ..... 3 n.2

Miscellaneous

Affidavit of Kenneth Hamlett, Regional Monitor/Advocate for the Employment and Training Administration, of August 7, 1980, Attached as Appendix B to the Memorandum in Response to Plaintiffs' Motion for a Preliminary Injunction Against the Federal Defendants, Rios v. Marshall, No. 79 Civ. 5711 (S.D.N.Y., filed October 29, 1979) 5

Letter of April 7, 1980 from Leandro L. Pena, Director of the Bureau of Employment Security of the Department of Labor and Human Resources of the Commonwealth of Puerto Rico, to Regional Administrator James A. Ware 6

Letter of August 22, 1980 from Associate Regional Administrator Martin Weinles to Arthur L. Lane, Jr., Commissioner of the Virginia Employment Commission, with enclosures 6

LIST OF APPENDICES

A. Letter of April 7, 1980 from Leandro L. Pena, Director of the Bureau of Employment Security of the Department of Labor and Human Resources of the Commonwealth of Puerto Rico, to Regional Administrator James A. Ware.

B. Letter of August 22, 1980 from Associate Regional Administrator Martin Weinles to Arthur L. Lane, Jr., Commissioner of the Virginia Employment Commission, with enclosures.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

No. 80-1305

ALFRED L. SNAPP & SON, INC., *et al.*,
Petitioners,

v.

COMMONWEALTH OF PUERTO RICO on the relation of PEDRO BAREZ, SECRETARY, DEPARTMENT OF LABOR and HUMAN RESOURCES,
Respondent.

SUPPLEMENTAL BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

INTRODUCTION

Petitioners Alfred L. Snapp & Sons, Inc., *et al.*, submit this supplemental brief in support of their petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit pursuant to Sup. Ct. R. 22.6. The petition for writ of certiorari was filed in this Court on February 2, 1981. On February 4, 1981, oral argument was held in the United States Court of Appeals for the Second Circuit in the companion suit of *Commonwealth of Puerto Rico, Etc. v. Bramkamp*, Docket No. 79-7777 (2d Cir.). *See* Petition for Writ of Certiorari, at 9-10. Following oral argument, the Second Circuit requested the Solicitor General of the United States to file an *amicus curiae* brief on behalf of the appropriate government agencies on the issues involved

in this appeal. On April 6, 1981, the United States Secretary of Labor filed an *amicus* brief with the Second Circuit. In the opinion of counsel for petitioners, the *amicus* brief of the U.S. Secretary of Labor raises issues that are germane to the immediate issue of whether the Court should grant the petition for writ of certiorari and to the ultimate issue of whether the Commonwealth of Puerto Rico has *parens patriae* standing to sue the Virginia apple growers who allegedly violated the contractual and federal regulatory rights of Puerto Rican workers.

ARGUMENT

Allowing the Commonwealth of Puerto Rico to Sue As *Parens Patriae* in Cases Like This Will Unnecessarily Clog the Federal Courts With Cases That Could Be Resolved Through the U.S. Department of Labor's Employment Service Complaint System.

The U.S. Department of Labor (hereinafter referred to as the "USDOL") has established a complaint system to investigate and resolve complaints by employees that an employer has violated the USDOL's employment service system regulations. *See* 20 C.F.R. Part 658. It is apparent from the *amicus* brief filed by the USDOL with the Second Circuit in connection with the companion suit of *Commonwealth of Puerto Rico, Etc. v. Bramkamp*, No. 79-7777 (2d Cir.), that the Commonwealth of Puerto Rico is attempting to circumvent the USDOL's employment service complaint system.[1] Allowing the Commonwealth of Puerto Rico to circumvent the USDOL employment service complaint system and sue as *parens patriae* in cases like this will unnecessarily clog the

[1] Although the USDOL concluded that ". . . federal policy considerations do not weigh against granting the Commonwealth standing to pursue its action as *parens patriae*," Amicus Brief, at 10, counsel for petitioners believe that that conclusion is not justified by the facts, as will be explained more fully in this Supplemental Brief.

federal courts with cases that the complaint system was created to resolve.

In its complaint, the Commonwealth of Puerto Rico alleged that the Virginia apple growers violated the USDOL's regulations. It is not surprising that the USDOL has the authority to investigate alleged violations of its own regulations. The USDOL points out in its *amicus* brief that it ". . . may initiate an investigation when it has 'probable cause to believe that an employer has not lived up to the terms of the temporary labor certification.'" Brief for the Secretary of Labor as Amicus Curiae (hereinafter referred to as "Amicus Brief"), at 6; *see also* 20 C.F.R. § 655.210(a). As the USDOL also points out, ". . . Department regulations provide for the investigation of all complaints relating to failure to comply with the terms of the job offer or other applicable provisions." Amicus Brief, at 7; *see also* 20 C.F.R. Part 658.[2]

---

[2] The USDOL disingenuously suggests in its *amicus* brief that ". . . the complaint system does not contemplate injunctive relief or attendant contempt proceedings." Amicus Brief, at 12. The USDOL, however, may deny access to the employment service system or future temporary labor certification to any employer who has been found to have violated the terms of a temporary labor certification. *See* 20 C.F.R. § 655.210(a) and § 658.502. Since the New York and Virginia apple growers have been unable to recruit sufficient local labor to harvest their crops for close to three decades, the possibility of denial of access to the employment service system and of temporary foreign labor certification represents a threat to them as serious as any contempt citation. Without sufficient labor to harvest their apples, the apple growers would suffer serious financial losses and probable bankruptcy. In fact, denial of access to the employment service system and of foreign labor certification would accomplish the same result as the injunction which the Commonwealth of Puerto Rico seeks to obtain in this case, since the effect of both are dependent on the grower continuing to utilize the employment service system and to seek temporary foreign labor certification. Furthermore, the USDOL does have the authority to go into court to seek injunctive relief and

Significantly, the USDOL's regulations place the initial responsibility for investigating employee complaints with the state employment agency in the state where the violation allegedly occurred. According to the USDOL's *amicus* brief, "[a]n aggrieved individual may file a complaint with any state employment agency; *but the complaint will be investigated by the state in which the alleged violation occurred.*" Amicus Brief, at 7. (Emphasis added.) "For example, a Puerto Rican worker involved in the apple harvest in New York state could file a complaint in New York or with the Puerto Rico employment agency upon his return. In the latter event, the Puerto Rico agency would forward the complaint to New York for processing." Amicus Brief, at 7-8; *see also* 20 C.F.R. § 658.412(d). Thus, the USDOL's own regulations clearly contemplate that a labor supply state, such as the Commonwealth of Puerto Rico in this case, will play no role in the investigation of employee complaints when the work has been performed in another state, other than forwarding the complaints to the state where the work was performed. There are sound reasons for such a policy, since the state agency where the work was performed is in a much better position to investigate such complaints than a state agency hundreds of miles away from where the alleged violation occurred.

Not only do the USDOL's regulations contemplate that employee complaints will be investigated by the state employment agency in the state where the violations allegedly occurred, but both the Virginia and New York state employment agencies investigated complaints by Puerto Ricans who worked in the 1978 apple harvest and were unable to substantiate any of them. In the case

---

attendant contempt proceedings itself. In fact, it has sought to do so on previous occasions. *See, e.g., Western Colorado Fruit Growers Association v. Marshall*, 483 F. Supp. 693, 698 (D.C. Colo. 1979).

of the Puerto Rican workers who worked in New York, the USDOL last August filed a Memorandum in Response to Plaintiffs' Motion for a Preliminary Injunction Against the Federal Defendants in the case of *Rios v. Marshall*, No. 79 Civ. 5711 (S.D.N.Y., filed October 22, 1979), a case brought in part by 13 Puerto Ricans involved in the 1978 New York apple harvest against some of the same New York apple growers sued by the Commonwealth of Puerto Rico in the *Bramkamp* case, *supra*. Attached to the USDOL's Memorandum was the affidavit of Mr. Kenneth Hamlett, Regional Monitor/Advocate for the Employment and Training Administration of the USDOL. His affidavit stated, in part, that

> "Mr. Rios' complaint was one of approximately 120 complaints filed by Puerto Rican workers as a result of their experiences in the 1978 New York apple harvest . . . At the present time, all of the 120 complaints have been resolved at the State level of the administrative complaint system. *In all cases, New York State was unable to substantiate the complaints of those workers.* Upon the completion of the State's action, each of the 120 workers was advised of the administrative determination by New York and also advised of their right to appeal that determination to the Federal Regional Administration. Only ten workers took an appeal."

See Affidavit of Kenneth Hamlett of August 7, 1980, attached as Appendix B to the Memorandum in Response to Plaintiffs' Motion for a Preliminary Injunction Against the Federal Defendants, *Rios v. Marshall, supra*. (Emphasis added.) In the case of the Puerto Ricans who worked in Virginia, counsel for petitioners have been informed by the Virginia Employment Commission that 178 Puerto Ricans who worked in the 1978 Virginia apple harvest filed complaints and that in all cases the Virginia Employment Commission was unable to sub-

stantiate the complaints of those workers.[3] Only 23 workers filed an appeal. The Regional Administrator for Region III of the Employment and Training Administration subsequently substantiated that, in the case of 14 of the appealed cases, there were no employer violations. The remaining nine appeals are still pending. *See* letter of August 22, 1980, from Associate Regional Administrator Martin Weinles to Arthur L. Lane, Jr., Commissioner of the Virginia Employment Commission, a copy of which appears at Appendix A hereof.

The USDOL also points out in its *amicus* brief that "[t]he regulations . . . provide that a party may appeal the state's decision to the Regional Administrator of the Department of Labor, 20 C.F.R. § 658.418(c), after he has exhausted his state remedies, 20 C.F.R. § 658.421(a). The Department of Labor may conduct further investigation of and a hearing on the complaint. 20 C.F.R. § 658.421(c) and (e), 658.424." Amicus Brief, at 8. In fact, after the New York State Job Service investigated complaints of 120 Puerto Ricans involved in the 1978 New York apple harvest and was unable to substantiate any of them, the Commonwealth of Puerto Rico actually appealed one of the decisions of the New York State Job Service to the Regional Administrator's office on behalf of the complaining Puerto Rican worker. *See* letter of April 7, 1980, from Leandro L. Pena, Director of the Bureau of Employment Security of the Department of Labor and Human Resources of the Commonwealth of Puerto Rico, to Regional Administrator James A. Ware, attached to Exhibit 3 to Affidavit of Kenneth Hamlett, *supra*, a copy of which appears at Appendix B hereof.

---

[3] The information relating to the Virginia complaints was obtained from Ms. Jeff Hudson, State Monitor/Advocate of the Virginia Employment Commission. Twenty-two of the 178 complaints were actually filed against the Department of Labor and Human Resources of the Commonwealth of Puerto Rico.

Obviously, the USDOL's employment service complaint system provides a means of investigating and resolving employee complaints without getting the federal courts involved. In fact, both the New York and Virginia state employment agencies investigated all the Puerto Rican complaints in 1978 and were unable to substantiate any of them. Relatively few of the Puerto Ricans who filed complaints elected to appeal the decisions of the New York and Virginia state agencies to the Regional Administrator's office as specifically provided for in the USDOL's regulations. If the Commonwealth of Puerto Rico was not satisfied with the results of the investigations and had information that those state agencies had failed to consider, it should have brought such facts to the attention of the Regional Administrators for the respective regions. In fact, it did file an appeal on behalf of at least one Puerto Rican worker. If it did not have any information that would have established violations by the apple growers, it had no basis for bringing the two lawsuits.[4] In either case, the Commonwealth of Puerto Rico's attempt to sue the apple growers for alleged violations of the USDOL's employment service system regulations flouts the very regulations it seeks to enforce. Per-

[4] There was no mention in the USDOL's *amicus* brief of the investigations into the complaints by the Puerto Rican workers in 1978. It is not surprising, therefore, that the USDOL's *amicus* brief did not even address the issue of whether the Commonwealth of Puerto Rico should be permitted to second-guess the USDOL by bringing a *parens patriae* action for the enforcement of USDOL regulations after the USDOL has already investigated and found no basis for the alleged violations. Permitting enforcement activities of the same regulations by both the USDOL and the Commonwealth of Puerto Rico would be needlessly duplicative and would wastefully consume judicial resources. Moreover, the growers would be subjected to impossible burdens if they had to defend themselves, in turn, against administrative investigations by the USDOL, *parens patriae* lawsuits by the Commonwealth of Puerto Rico, and individual lawsuits by the Puerto Rican workers themselves.

mitting the Commonwealth of Puerto Rico to skirt the employment service complaint system which was designed to resolve such disputes will clog the overburdened federal courts with cases that could have been and, for the most part, were resolved administratively.

CONCLUSION

The Commonwealth of Puerto Rico is attempting to sue as *parens patriae* on behalf of Puerto Rican workers who could have had their complaints resolved through the U.S. Department of Labor's employment service complaint system. Permitting the Commonwealth of Puerto Rico to do so will clog the overburdened federal courts with cases that could have been and, for the most part, were resolved administratively. This is another reason why the Commonwealth of Puerto Rico should not be permitted to sue as *parens patriae* in this case.

Respectfully submitted,

THOMAS J. BACAS
1250 Connecticut Avenue, N.W.
Suite 318
Washington, D.C. 20036
202/466-7330
Attorney for Petitioners

Of Counsel:

CHARLES, KARALEKAS, BACAS
& MCCAHILL
S. STEVEN KARALEKAS

May 1, 1981